

REMARKS

Reconsideration is respectfully requested. Claims 1-4, 8, 9, 14 and 15 are present in the application. No claims are amended. Claims 5-7 and 10-13 were previously canceled.

Claims 1, 3, 8, 9, 14 and 15 are rejected under 35 USC §103(a) as allegedly being unpatentable over Ogasawara (US 6512919) in view of Murthy (US 6353792) and further in view of Boesjes (US 6799165).

Applicant respectfully traverses.

The previous rejection was made by combination of Murthy in view of Ogasawara and further in view of Boesjes.

Applicant previously explained why those documents, whether considered alone or combined, did not teach or suggest the claims.

Merely re-ordering the list of references relied on does not teach or suggest applicant's claims. The claims still define over the combination. The references still lack what is claimed. It is rather hard to believe that merely re-ordering the reference list would be considered to make applicant's claims unpatentable, especially in view of the prior explanations and arguments already submitted in responses previously.

In addition to the prior arguments already submitted, which as the Examiner noted, were sufficient to overcome the rejection over Murthy in view of Ogasawara and further in view of Boesjes,

it is respectfully submitted that the Examiner's current rejection should not be sustained because in Ogasawara, the user is employing the mobile phone to purchase items in a store, not to purchase software that is downloaded to the phone. The only thing downloaded to the phone is the operative software to run the purchasing function. The phone operates as a purchasing terminal, not as a device into which purchased software is to be loaded. Note what Ogasawara says:

By utilizing the customer's own wireless telephone for electronic shopping, rather than using a dedicated personal shopping system terminal, the substantial investment associated with the use of such dedicated personal shopping system terminals is eliminated.

See Ogasawara at Column 2, lines 37-40.

The problem Ogasawara is concerned with is providing a way to use a customer's cell phone as a purchase facilitation terminal in a store. This saves the store owner from having to purchase dedicated "scanner embedded hand-held terminal". There is no reason to think that this would somehow relate to purchase of software.

So there would not be any reason for someone of ordinary skill in the art to modify Ogasawara by the other references, to download purchased software into the phone, since the purpose of

Ogasawara is to buy items physically located in facilitation terminal. The purpose of Ogasawara is not to have the user purchase software to use on the phone.

That Ogasawara is for using the phone as a tool to facilitate purchase of physical items, not for downloading purchases into the phone, is further shown by the statement in Ogasawara discussing the store location information may be provided to a remote server for the purchase of inventory management of the purchased items at the store where the items are purchased. This indicates that physical (vs. digital) items are being managed, rather than downloaded software.

There is no motivation to modify Ogasawara's phone to download the purchased item into the phone. It would not be sensible to think of doing so, when the device was designed for a different use and purpose. One would not think of nor want to "download" a physical item into the phone in Ogasawara.

The rejection is made by modifying a system (Ogasawara) that has no relation to purchasing software for use in and downloading it into a portable terminal or phone and only uses noted software to operate the phone as a purchase terminal, with a system (Murphy) having plural mailboxes into which the same copy of the content of a master mailbox is copied, further modified with a system (Boesjes) in which purchased goods are only temporarily stored in a public area. Such modification would not produce applicant's claims, and, there is no motivation to make such

modification, as there is no discernable reason to make the modifications.

Further, the rejection arguments are inconsistent. At line 1 of page 3 of the Office Action, it is stated that Ogasawara teaches allocating a uniquely dedicated storage area for each user, and then, in lines 13 and 14 of that page, it is stated that "Ogasawara does not disclose dedicated storage areas uniquely allocated . . . ".

Applicant has discussed multiple times in more than one prior response to office action that Ogasawara does not provide uniquely allocated to each user storage areas. What can be uniquely allocated to each user in Ogasawara is a program (software) itself stored in a storage (download program memory 52 in Fig. 2) but not a storage area, and which is therefore unlike in Applicant's invention. This is understandable by the fact that no programs other than the "download program" are stored in the memory 52.

In the Office Action, discussing Murphy, it is stated that Murphy disclosed "storing data, which is downloaded at a data site on the network, from the data site into one of the dedicated storage areas uniquely allocated to said one of the users of the storage server without sending the data from the data site directly to a data terminal of said one of the users".

As noted before, the contents of the user mail boxes are all the same in Murphy when compared with each other because data is a copy of the content in the master mail box (8).

So Murphy would seem to teach against having unique software dedicated to the individual users.

The Examiner's position is respectfully believed to be not supported by Murthy.

Further, consider, for example, claim 1, which includes "storing software, which is purchase-requested . . . by one of the users . . .". Claim 8 also has conceptually corresponding language.

Murphy is not storing software (or data, if we adopt the Examiner's morphing of the terminology, which we do not adopt, but only reference for the sake of addressing the rejection) that is purchase-requested by the user, or for that matter, is in any way requested by the user. Murphy is copying the data to all the mail boxes without regard to any request by the user. The user is not making a user request for the data. So the concept of doing the storing in response to a user request is absent from Murphy. This is yet another reason why one would not look to Murphy and why it would not produce applicant's claims when modifying Ogasawara with Murphy and Boesjes.

It is respectfully submitted that claims 1, 3, 8, 9, 14 and 15 are therefore allowable.

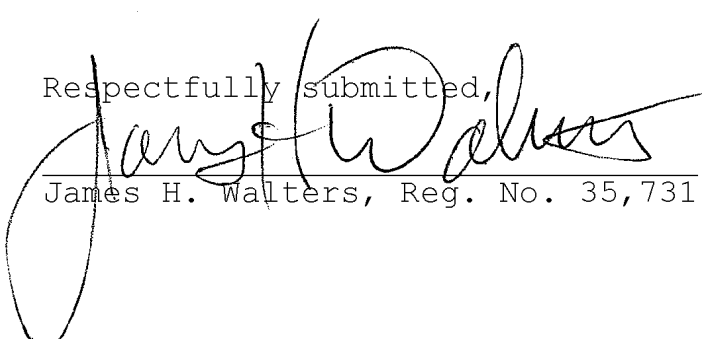
Claims 2 and 4 are rejected in view of the rejection to claim 1, further in view of Zilliacus. As noted before, Zilliacus adds nothing that would overcome the lacking of teaching or motivation in the combination of Ogasawara in view of Murthy in view of Boesjes, and claims 2 and 4 should also be allowable.

In view of the above, applicant respectfully believes that all the claim rejections under 35 USC 103 should be withdrawn.

It is believed that all necessary fees have been paid with the filing of this response. However, if additional fees are required to keep the application pending, or if refund is owed, please charge/refund deposit account 503036.

In light of the above noted amendments and remarks, this application is believed in condition for allowance and notice thereof is respectfully solicited. The Examiner is asked to contact applicant's attorney at 503-224-0115 if there are any questions.

Respectfully submitted,

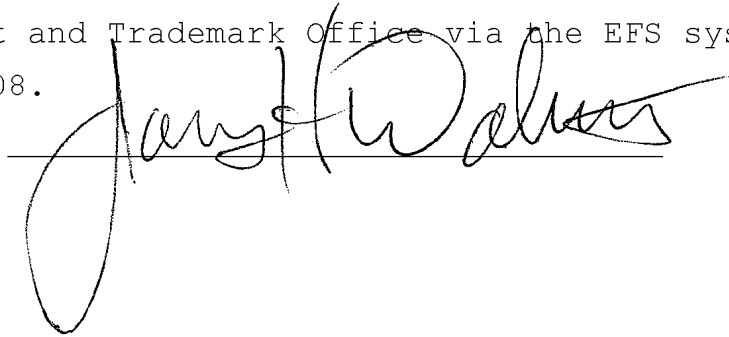

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Reply to Office action of April 11, 2008

I hereby certify that this correspondence is being
transmitted to the Patent and Trademark Office via the EFS system
on this September 11, 2008.

A handwritten signature in black ink, appearing to read "James H. Walters", is written over a horizontal line. The signature is fluid and cursive, with a large initial "J" and "W".